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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,738	04/26/2005	Marcus Burgel	2002P16717WOUS	9005

7590 08/01/2007
Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

WONG, JOSEPH D

ART UNIT	PAPER NUMBER
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2168

MAIL DATE	DELIVERY MODE
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08/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/532,738

Applicant(s)

BURGEL ET AL.

Examiner

Joseph D. Wong

Art Unit

2168

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 8-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

TIM VO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 11. does NOT place the application in condition for allowance because: The instant amendment does not overcome every issue raised in the final rejection. The arguments with respect to prior art rejection of claim 8 incorrectly assert that Cheyer teaches away from the claimed invention because Cheyer is used as a secondary reference and as such may offer additional or alternative features not claimed. The arguments do not demonstrate that Cheyer teaches away from Williams or Devarakonda. Accordingly, the substance of the argument is ineffective for overcoming the 35 USC 103(a) rejection of claims 8 or 10. The Examiner regrets any misunderstanding arising from a cut and paste typo of pasting a citation for Pace in place of Cheyer in the rejection of dependent claim 10. The statement of rejection should read "Claims 10, 11, 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams, US Patent 6,591,272 B1, filed 22 Feb 2000, in view of *Cheyer et al., US Patent 6,859,931 B1, filed 17 Mar 1999, hereinafter Cheyer* and in further view of Devarakonda et al., US Pre-Grant Pub. No. 2003/0225801 A1, filed 31 May 2002, hereinafter Devarakonda.....Williams *and Cheyer* do not explicitly teach form a logical subset of all elements of an object." The statement of rejection on certain dependent claims 10, 11, 14 and 18 have been corrected to make its citations consistent with the statement of rejection on independent claim 8 as well as the body of rejection underneath claim 10. Arguments request a withdrawal of the Final Office Action due to the inclusion of a citation of "Pace" within the statement of rejection for claim 10, however since the body of the Final rejection of claim 10 remains intact and additional grounds in the final are necessitated by amendment--after careful consideration and consultation--it has been determined that the outcome would be the same even if the cut and paste typo were corrected. The arguments do not demonstrate that outcome would necessarily result in an allowance and thus the request even if granted appears moot because the arguments do not present clear and convincing evidence as to how if the withdrawal were granted that it would necessarily reverse the final outcome. The following is offered as a clarification regarding claim 10, Williams is the primary reference, *Cheyer is a secondary reference* and Devarakonda is a tertiary reference. Examiner's mention of "Pace" was a cut and paste artifact. The instant amendment alters the claims in a manner that introduces new limitations that require further research and/or reconsideration. The instant arguments do not explain why the amended claims overcome the prior art and thus are not persuasive. All grounds of rejection are maintained with a cut and paste typo corrected on P. 12, Lines 4-9 of the Final Office action to clarify its dependency upon the prior art used to reject the independent claim 8. The argument against the rejection of claim 10 even if interpreted in Applicant's favor does not necessarily cause the claim to be in condition for allowance without further amendment because the claim is a dependent claim. Note the argument against the rejection of claim 10 asserts an error of a clerical nature which has been further clarified and thus the argument is evaluated to be not persuasive for overcoming the substance of the rejection. Accordingly, the request for reconsideration has been considered but it does NOT place the instant application in condition for allowance. However, newly amended claims raised new issues that would require further consideration and/or search.